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10/521,652

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EXAMINER

SELLS, JAMES D

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/521,652
Filing Date: January 14, 2005
Appellant(s): CAMPIAN, JONATHON REO

David A. McClaughry (37,885)
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 02/08/2010 appealing from the Office action mailed 05/11/2009.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

The rejection of claims 2-12, 22-27, 32, 34-45 and 49-51 under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is withdrawn by the examiner.

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,228,190	Sawa	7-1993
5,375,951	Veale	12-1994

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 47-48 and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sawa (US Patent 5,228,190) in view of Veale (US Patent 5,375,951).

Regarding claim 52, Sawa discloses a method for forming a body panel by joining of a first metal panel to a second metal panel, the method comprising: locating a first metal panel (Wo) on an upper surface (5a) of a lower nest (5) such that a perimeter region on a first side of said first metal panel is supported on a generally flat material-contacting area of said frame; locating a second metal (Wi) panel on a second side of said first metal panel opposite said first side; and operating a tool (2) across the boundary of said upper surface to said material contacting area on said first metal panel

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to form and flange said first metal panel over an edge of said second metal panel. See Figs. 1 and 4.

However, Sawa does not disclose the interior region having an elongated channel and evacuating the elongated channel to immobilize the first metal panel in the manner claimed by the applicant. Regarding this difference, the applicant is directed to the reference of Veale.

Veale discloses a receiving bed for an automated milling machine. As shown in Figs. 3-4, nest or bed 11 includes vacuum channel 12, raised panel 13 and vacuum hole 14 connected via tube 15 to vacuum system 16. This system is designed to hold a variety of materials, such as metals, during a variety of "milling" or "routing" operations such as cutting, trimming or grinding. See col. 1, lines 8-13.

It would have been obvious to one having ordinary skill in the art to employ a vacuum channel system, as taught by Veale, in the method of Sawa in order to provide the predictable result of more accurately and precisely aligning and holding the workpieces during automated processing

Regarding claims 47-48, Sawa appears to align the first and second metal panels Wo and Wi in the manner claimed by the applicant. In addition, it would have been obvious to one having ordinary skill in the art to align such metal sheet materials prior to evacuating since the evacuating is intended to immobilize the materials.

(10) Response to Argument

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Regarding claims 49-51, applicant's arguments are persuasive and the rejection of claims 2-12, 22-27, 32, 34-45 and 49-51 under 35 U.S.C. 112, first paragraph, is withdrawn by the examiner.

Regarding claims 47-48 and 52, applicant argues Veale and Sawa fail to appreciate the problems associated with lateral obstructions. However, it is noted that the features upon which applicant relies (i.e., unobstructed lateral movement of the forming tool) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant argues the interconnected channels 12 disclosed by Veale do not form a sealed elongated channel in the manner claimed by the applicant. The examiner does not agree. Elements 12 of Veale are described as channels and are shown with elongated portions. See col. 3, lines 27-36 and Figs. 3-4 of Veale. Material 17 is placed on top of bed 11 sufficient to cover channels 12. See col. 4, lines 20-22. This creates the sealed elongated channels in the manner recited in applicant's claims. Therefore the examiner believes this disclosure meets applicant's limitation and applicant's argument is not persuasive in this instance.

Applicant argues Veale does not disclose "an interior region of said first side engag[ing] a pad such that a sealed elongated channel is formed between said pad and said first metal panel adjacent a portion of said material-contacting area; [and] ... evacuating said sealed elongated channel to immobilize said first metal panel on said frame ". The examiner does not agree. Veale discloses a vacuum table in which vacuum channels 12 are covered with material 17. See col. 4, lines 13-30 and Figs. 3, 4A and 4B of Veale.

Applicant argues the combination of Sawa in view of Veale as proposed by the examiner would not be operable. However, this appears to me a mere assertion by applicant that is not supported by any evidence on the record and the examiner does not agree. The court has found that those skilled in the art, having been taught the desirability of a certain modification, would recognize that other modifications were needed to accommodate that modification, and that those skilled in the art would construct such means. In re Bode et al., 193 USPW 12 (CCPA 1977). Therefore the applicant is believed to be incorrect in this instance.

Applicant argues the applied references do not show "a pad such that a sealed elongated channel is formed between the pad and the first sheet metal panel...;" and "evacuating said sealed channel to immobilize said first metal panel on said frame..." The specification describes the pad as an elastic or semi-elastic polymerized material suitable to provide a substantially air-tight seal with respect to the first sheet material and to provide a cushioned surface support for carefully supporting the first sheet material. The examiner does not agree. First, applicant's claim language does not

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invoke 112, 6th paragraph for means plus function. Second, the top portions of raised panels 13 described by and shown in Figs. 3, 4A and 4B of Veale and function as applicant's claimed pads while bed 11 functions as applicant's claimed nest. There is nothing in applicant's claims that requires such a pad be an elastic or semi-elastic polymerized material suitable to provide a substantially air-tight seal with respect to the first sheet material and to provide a cushioned surface support for carefully supporting the first sheet material. Therefore applicant's argument is believed to be incorrect in this instance.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/James Sells/

Primary Examiner, Art Unit 1791

Conferees:

/Christopher A. Fiorilla/

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Supervisory Patent Examiner, Art Unit 1700

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